

OFFICE OF THE ATTORNEY GENERAL

81-00046



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ATTORNEY GENERAL
STATE OF ALABAMA

OCT 30 1980

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Honorable James P. Nix
Mayor, City of Fairhope
Post Office Drawer 429
Fairhope, Alabama 36532

Municipalities - Officers and
Offices - Legal Fees

The City of Fairhope may under certain circumstances employ legal counsel for the mayor, members of city council and members of city library board of trustees, sued in their individual capacities.

Dear Mayor Nix:

The Attorney General has received the request for an opinion of the City of Fairhope, an incorporated municipality. The opinion request asks whether the City of Fairhope may employ and pay legal counsel for the Mayor of Fairhope, the individual members of the city council and the individual members of the city library board of trustees, who have been sued in their individual capacities.

The request states that the City of Fairhope, the Board of Trustees of the Fairhope Public Library, the Mayor of Fairhope, the individual members of the Fairhope City Council and the individual members of the Board of Trustees of the Fairhope Public Library have been sued by a former director and librarian of the Fairhope Public Library. The mayor, city council members and board of trustee members have been sued in individual capacities only, although all allegations relevant to such individuals refer exclusively to the period during which each served as a municipal officer.

The request further states that one member of the city council who is named as an individual defendant resigned prior to the date suit was filed but that at all times relevant to the Complaint such individual was a member of the city council. You also state that an additional member of the city council, also named as an individual defendant, left office after suit was filed; again at all times relevant to the Complaint such individual was a member of the city council.

This office has reviewed the request and the complaint attached as an exhibit to the request. It is the opinion of this office that the City of Fairhope may, in its discretion, expend funds for the defense of the mayor, members of the city council, including the former members of the city council, and members of the city library board of trustees upon the satisfaction of certain prerequisites.

In an opinion dated April 19, 1979, to Mr. Chalmers Bryant, Mayor, City of Andalusia, Alabama, found in Quarterly Report of Attorney General, Vol. 175, page 16, this office responded to a similar inquiry. A copy of that opinion is enclosed for your convenience. This office stated:

It is the opinion of this office that the City of Andalusia may, in its discretion, expend funds for the defense of council members only if the tests outlined in the following paragraph are met.

The municipal corporation must have a proper interest in the action. The acts allegedly committed must have been done by the officials in the discharge of their corporate duties. And the officials must have acted honestly and in good faith. City of Montgomery v. Collins, 355 So.2d 1111 (1978); City of Birmingham v. Wilkinson, 239 Ala. 190, 194 So. 548 (1940).

When, in the judgment of the municipal governing body, the above-quoted tests have been satisfied, then and only then may the governing body decide whether to expend funds for the defense of city council members.

Quarterly Report of Attorney General, Vol. 175, p. 17.

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The council members of Andalusia had been sued both individually and in their official capacities. However, the fact that the above-named officials of the City of Fairhope have been sued only in their individual capacities does not mean that there can be no proper corporate interest and thus does not affect our previous ruling.

If, in the judgment of the municipal governing body of the City of Fairhope, the tests outlined in the cited opinion have been satisfied, the City of Fairhope may employ and pay legal counsel for the mayor, the members of the city council and the members of the library board of trustees who have been sued in their individual capacities.

I do hope that this opinion fully answers the request submitted on behalf of the City of Fairhope. If, however, this office may be of further assistance, please do not hesitate to contact us.

Yours truly,

CHARLES A. GRADDICK
Attorney General

By-



CAROL JEAN SMITH
Assistant Attorney General

CJS:sa
Enclosure

OFFICE OF THE ATTORNEY GENERAL



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April 19, 1979

Honorable Chalmers Bryant
Mayor, City of Andalusia
P. O. Box 429
Andalusia, Alabama, 36420

MUNICIPALITIES - OFFICERS AND OFFICES - LEGAL FEES

City of Andalusia may under certain circumstances employ legal counsel for members of city council.

Opinion by Assistant Attorney General Smith.

Dear Mayor Bryant:

Your opinion request concerning the propriety of employing legal counsel to defend members of the city council has been received by the Office of the Attorney General. Your request states that the City of Andalusia and members of the City Council of Andalusia have been sued by a former Chief of Police of the City of Andalusia. Council members are sued both individually and in their official capacities.

You ask if the City of Andalusia may employ and pay for legal counsel to defend members of the City Council in two suits claiming damages and other relief for their action in discharging the Chief of Police. It is the opinion of this office that the City of Andalusia may, in its discretion, expend funds for the defense of council members only if the

Honorable Chalmers Bryant
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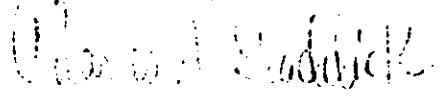
tests outlined in the following paragraph are met.

The municipal corporation must have a proper interest in the action. The acts allegedly committed must have been done by the officials in the discharge of their corporate duties. And the officials must have acted honestly and in good faith. City of Montgomery v. Collins, 355 So.2d 1111 (1978); City of Birmingham v. Wilkinson, 239 Ala. 199, 194 So. 548 (1940).

When, in the judgment of the municipal governing body, the above-quoted tests have been satisfied, then and only then may the governing body decide whether to expend funds for the defense of city council members.

I do hope that this response fully answers your question. If, however, this office may be of further assistance, please do not hesitate to contact us.

Yours truly,


CHARLES A. GRADDICK
ATTORNEY GENERAL

CAG:cjs